

EXHIBIT 1

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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BARBARA GAYLE, individually, NORMA CLARK, individually, LAURA FLORES, individually, DOROTHY JONES, individually, ROSALIE BUONAMANO and ARNOLD BUONAMANO, individually and as husband and wife, CAROL MEIDL and EDWARD MEIDL, individually and as husband and wife, CHRISTIE KELLY, individually, PEARLY COLEMAN, individually, MARA SCOTT and RONNIE SCOTT, individually and as husband and wife, CHERRY RICHARDSON, individually, CHERYL DORSEY, individually, TAMMY AXELROD and BRYAN AXELROD, individually and as husband and wife, CHARLIE JOHNSON, individually, MICHELLE O'BREMSKI, individually, TAWNYA LOCKHART, individually, LEONA RHETT and TOMMIE A. RHETT, individually and as husband and wife, JACQUELYN LOVETT, individually, SHARON STEWART, individually, SHENNA ALBERT, individually, CARLETHA FOSTER, individually

Plaintiffs,

-against-

PFIZER, INC.; MCKESSON CORPORATION; and
DOES 1-50

Defendants.

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To the above named Defendant(s)

You are hereby summoned to answer the Complaint in this action, and to serve a copy of your answer, or if the Complaint is not served with this Summons, to serve a notice of appearance on the Plaintiffs' attorney(s) within twenty days after the services of this Summons exclusive of the day of service, where service is made by delivery upon you personally within the state, or within 30 days after completion of service where service is made in any other manner. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

Dated: Southfield, Michigan
April 15, 2019

Yours,

By: 

SUMMONS

Plaintiffs designate New York County as the place of trial.

The basis of the venue is Defendant Pfizer, Inc.'s principal place of business:

235 E. 42nd Street
New York, New York 10017

Index No.:

Date Summons & Complaint Filed:

To:

Pfizer, Inc.
c/o CT Corporation System
111 Eighth Avenue,
New York, NY 10011

McKesson Corporation
c/o Corporation Service Company
2710 Gateway Oaks Dr., Ste 150 N
Sacramento, CA 95833

1 Ari Kresch (SBN 130891)
2 **Excolo Law PLLC**
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Southfield, MI 48076
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5 *Attorney for Plaintiffs STATE OF NEW YORK*

6 **SUPREME COURT: NEW YORK**

7
8 BARBARA GAYLE, individually, NORMA
CLARK, individually, LAURA FLORES,
individually, DOROTHY JONES,
individually, ROSALIE BUONAMANO and
ARNOLD BUONAMANO, individually and
as husband and wife, CAROL MEIDL and
EDWARD MEIDL, individually and as
husband and wife, CHRISTIE KELLY,
individually, PEARLY COLEMAN,
individually, MARA SCOTT and RONNIE
SCOTT, individually and as husband and
wife, CHERRY RICHARDSON,
individually, CHERYL DORSEY,
individually, TAMMY AXELROD and
BRYAN AXELROD, individually and as
husband and wife, CHARLIE JOHNSON,
individually, MICHELLE O'BREMSKI,
individually, TAWNYA LOCKHART,
individually, LEONA RHETT and TOMMIE
A. RHETT, individually and as husband and
wife, JACQUELYN LOVETT, individually,
SHARON STEWART, individually,
SHENNA ALBERT ,individually and
CARLETHA FOSTER, individually
Plaintiffs,

20 vs.

21 PFIZER, INC.; MCKESSON
22 CORPORATION; and DOES 1-50,

23 Defendants.

24 Case No.:
25

26 **COMPLAINT FOR DAMAGES**

- (1) **Strict Liability**
- (2) **Negligence**
- (3) **Breach of Express Warranty**
- (4) **Breach of Implied Warranty**
- (5) **Fraud**
- (6) **Fraudulent Concealment**
- (7) **Violation of Business & Professions Code**
§ 17200
- (8) **Violation of Business & Professions Code**
§ 17500
- (9) **Loss of Consortium**

27 **DEMAND FOR JURY TRIAL**

28 For their Complaint against the Defendants, Plaintiffs allege:

29 **PARTIES AND JURISDICTION**

30 1. Plaintiff BARBARA GAYLE is, and at all relevant time was, a citizen and resident of the State

1 of MINNESOTA. Plaintiff BARBARA GAYLE brings this action for personal injuries sustained by
2 the use of LIPITOR® (atorvastatin calcium), and as a direct and proximate result of being prescribed
3 and ingesting LIPITOR®, Plaintiff BARBARA GAYLE was diagnosed with Diabetes Mellitus Type
4 II.

5 2. Plaintiff NORMA CLARK is, and at all relevant time was, a citizen and resident of the State
6 of FLORIDA. Plaintiff NORMA CLARK brings this action for personal injuries sustained by the use
7 of LIPITOR® (atorvastatin calcium), and as a direct and proximate result of being prescribed and
8 ingesting LIPITOR®, Plaintiff NORMA CLARK was diagnosed with Diabetes Mellitus Type II.

9 3. Plaintiff LAURA FLORES is, and at all relevant time was, a citizen and resident of the State
10 of FLORIDA. Plaintiff LAURA FLORES brings this action for personal injuries sustained by the use
11 of LIPITOR® (atorvastatin calcium), and as a direct and proximate result of being prescribed and
12 ingesting LIPITOR®, Plaintiff LAURA FLORES was diagnosed with Diabetes Mellitus Type II.

13 4. Plaintiff DOROTHY JONES is, and at all relevant time was, a citizen and resident of the State
14 of FLORIDA. Plaintiff DOROTHY JONES brings this action for personal injuries sustained by the
15 use of LIPITOR® (atorvastatin calcium), and as a direct and proximate result of being prescribed and
16 ingesting LIPITOR®, Plaintiff DOROTHY JONES was diagnosed with Diabetes Mellitus Type II.

17 5. Plaintiff ROSALIE BUONAMANO is, and at all relevant time was, a citizen and resident of
18 the State of FLORIDA. Plaintiff ROSALIE BUONAMANO brings this action for personal injuries
19 sustained by the use of LIPITOR® (atorvastatin calcium), and as a direct and proximate result of being
20 prescribed and ingesting LIPITOR®, Plaintiff ROSALIE BUONAMANO was diagnosed with
21 Diabetes Mellitus Type II.

22 6. Plaintiff ARNOLD BUONAMANO at all times relevant to this action was and is a citizen and
23 resident of the State of FLORIDA. Plaintiffs ARNOLD BUONAMANO and ROSALIE
24 BUONAMANO., were and are, at all times relevant to this action, legally married as husband and
25 wife. Plaintiff ARNOLD BUONAMANO brings this action for, *inter alia*, the loss of consortium,
26 comfort, and society he suffered due to the personal injuries suffered by his wife, ROSALIE
27 BUONAMANO.

28 7. Plaintiff CAROL MEIDL is, and at all relevant time was, a citizen and resident of the State of



1 MINNESOTA. Plaintiff CAROL MEIDL brings this action for personal injuries sustained by the use
2 of LIPITOR® (atorvastatin calcium), and as a direct and proximate result of being prescribed and
3 ingesting LIPITOR®, Plaintiff CAROL MEIDL was diagnosed with Diabetes Mellitus Type II.

4 Plaintiff EDWARD MEIDL at all times relevant to this action was and is a citizen and resident
5 of the State of MINNESOTA. Plaintiffs CAROL MEIDL and EDWARD MEIDL., were and are, at
6 all times relevant to this action, legally married as husband and wife. Plaintiff EDWARD MEIDL
7 brings this action for, *inter alia*, the loss of consortium, comfort, and society he suffered due to the
8 personal injuries suffered by his wife, CAROL MEIDL.

9 Plaintiff CHRISTIE KELLY is, and at all relevant time was, a citizen and resident of the State
10 of FLORIDA. Plaintiff CHRISTIE KELLY brings this action for personal injuries sustained by the
11 use of LIPITOR® (atorvastatin calcium), and as a direct and proximate result of being prescribed and
12 ingesting LIPITOR®, Plaintiff CHRISTIE KELLY was diagnosed with Diabetes Mellitus Type II.

13 Plaintiff PEARLY COLEMAN is, and at all relevant time was, a citizen and resident of the
14 State of FLORIDA. Plaintiff PEARLY COLEMAN brings this action for personal injuries sustained
15 by the use of LIPITOR® (atorvastatin calcium), and as a direct and proximate result of being
16 prescribed and ingesting LIPITOR®, Plaintiff PEARLY COLEMAN was diagnosed with Diabetes
17 Mellitus Type II.

18 Plaintiff MARA SCOTT is, and at all relevant time was, a citizen and resident of the State of
19 FLORIDA. Plaintiff MARA SCOTT brings this action for personal injuries sustained by the use of
20 LIPITOR® (atorvastatin calcium), and as a direct and proximate result of being prescribed and
21 ingesting LIPITOR®, Plaintiff MARA SCOTT was diagnosed with Diabetes Mellitus Type II.

22 Plaintiff RONNIE SCOTT at all times relevant to this action was and is a citizen and resident
23 of the State of FLORIDA. Plaintiffs MARA SCOTT and RONNIE SCOTT., were and are, at all times
24 relevant to this action, legally married as husband and wife. Plaintiff RONNIE SCOTT brings this
25 action for, *inter alia*, the loss of consortium, comfort, and society he suffered due to the personal
26 injuries suffered by his wife, MARA SCOTT.

27 Plaintiff CHERRY RICHARDSON is, and at all relevant time was, a citizen and resident of
28 the State of FLORIDA. Plaintiff CHERRY RICHARDSON brings this action for personal injuries



1 sustained by the use of LIPITOR® (atorvastatin calcium), and as a direct and proximate result of being
2 prescribed and ingesting LIPITOR®, Plaintiff CHERRY RICHARDSON was diagnosed with
3 Diabetes Mellitus Type II.

4 14. Plaintiff CHERYL DORSEY is, and at all relevant time was, a citizen and resident of the State
5 of FLORIDA. Plaintiff CHERYL DORSEY brings this action for personal injuries sustained by the
6 use of LIPITOR® (atorvastatin calcium), and as a direct and proximate result of being prescribed and
7 ingesting LIPITOR®, Plaintiff CHERYL DORSEY was diagnosed with Diabetes Mellitus Type II.

8 15. Plaintiff TAMMY AXELROD is, and at all relevant time was, a citizen and resident of the
9 State of FLORIDA. Plaintiff TAMMY AXELROD brings this action for personal injuries sustained
10 by the use of LIPITOR® (atorvastatin calcium), and as a direct and proximate result of being
11 prescribed and ingesting LIPITOR®, Plaintiff TAMMY AXELROD was diagnosed with Diabetes
12 Mellitus Type II.

13 16. Plaintiff BRYAN AXELROD at all times relevant to this action was and is a citizen and
14 resident of the State of FLORIDA. Plaintiffs TAMMY AXELROD and RONNIE AXELROD., were
15 and are, at all times relevant to this action, legally married as husband and wife. Plaintiff RONNIE
16 AXELROD brings this action for, *inter alia*, the loss of consortium, comfort, and society he suffered
17 due to the personal injuries suffered by his wife, TAMMY AXELROD.

18 17. Plaintiff CHARLIE JOHNSON is, and at all relevant time was, a citizen and resident of the
19 State of MINNESOTA. Plaintiff CHARLIE JOHNSON brings this action for personal injuries
20 sustained by the use of LIPITOR® (atorvastatin calcium), and as a direct and proximate result of being
21 prescribed and ingesting LIPITOR®, Plaintiff CHARLIE JOHNSON was diagnosed with Diabetes
22 Mellitus Type II.

23 18. Plaintiff MICHELLE O'BREMSKI is, and at all relevant time was, a citizen and resident of
24 the State of NEW YORK. Plaintiff MICHELLE O'BREMSKI brings this action for personal
25 injuries sustained by the use of LIPITOR® (atorvastatin calcium), and as a direct and proximate result
26 of being prescribed and ingesting LIPITOR®, Plaintiff MICHELLE O'BREMSKI was
27 diagnosed with Diabetes Mellitus Type II.

28 19. Plaintiff TAWYNA LOCKHART is, and at all relevant time was, a citizen and resident of the



1 State of WYOMING. Plaintiff TAWYNA LOCKHART brings this action for personal injuries
2 sustained by the use of LIPITOR® (atorvastatin calcium), and as a direct and proximate result of being
3 prescribed and ingesting LIPITOR®, Plaintiff TAWYNA LOCKHART was diagnosed with Diabetes
4 Mellitus Type II.

5 20. Plaintiff LEONA RHETT is, and at all relevant time was, a citizen and resident of the State of
6 FLORIDA. Plaintiff, LEONA RHETT brings this action for personal injuries sustained by the use of
7 LIPITOR® (atorvastatin calcium), and as a direct and proximate result of being prescribed and
8 ingesting LIPITOR®, Plaintiff LEONA RHETT was diagnosed with Diabetes Mellitus Type II.

9 21. Plaintiff TOMMIE A. RHETT at all times relevant to this action was and is a citizen and
10 resident of the State of FLORIDA. Plaintiffs LEONA RHETT and TOMMIE A. RHETT., were and
11 are, at all times relevant to this action, legally married as husband and wife. Plaintiff TOMMIE A.
12 RHETT brings this action for, *inter alia*, the loss of consortium, comfort, and society he suffered due
13 to the personal injuries suffered by his wife, LEONA RHETT.

14 22. Plaintiff JACQUELYN LOVETT is, and at all relevant time was, a citizen and resident of the
15 State of FLORIDA. Plaintiff JACQUELYN LOVETT brings this action for personal injuries sustained
16 by the use of LIPITOR® (atorvastatin calcium), and as a direct and proximate result of being
17 prescribed and ingesting LIPITOR®, Plaintiff JACQUELYN LOVETT was diagnosed with Diabetes
18 Mellitus Type II.

19 23. Plaintiff SHARON STEWART is, and at all relevant time was, a citizen and resident of the
20 State of MISSOURI. Plaintiff SHARON STEWART brings this action for personal injuries sustained
21 by the use of LIPITOR® (atorvastatin calcium), and as a direct and proximate result of being
22 prescribed and ingesting LIPITOR®, Plaintiff SHARON STEWART was diagnosed with Diabetes
23 Mellitus Type II.

24 24. Plaintiff SHENNA ALBERT is, and at all relevant time was, a citizen and resident of the State
25 of MAINE. Plaintiff SHENNA ALBERT brings this action for personal injuries sustained by the use
26 of LIPITOR® (atorvastatin calcium), and as a direct and proximate result of being prescribed and
27 ingesting LIPITOR®, Plaintiff SHENNA ALBERT was diagnosed with Diabetes Mellitus Type II.

28 25. Plaintiff CARLETHA FOSTER is, and at all relevant time was, a citizen and resident of the



1 State of MISSOURI. Plaintiff CARLETHA FOSTER brings this action for personal injuries sustained
2 by the use of LIPITOR® (atorvastatin calcium), and as a direct and proximate result of being
3 prescribed and ingesting LIPITOR®, Plaintiff CARLETHA FOSTER was diagnosed with Diabetes
4 Mellitus Type II.

5 26. The Defendant PFIZER, INC., (hereafter referred to as "PFIZER") is a corporation or business
6 entity organized and existing under the laws of the State of Delaware, with its principal place of
7 business in New York, New York.

8 27. At all relevant times, Defendant PFIZER, INC. transacted business in the State of NEW YORK
9 and derives substantial income from doing business in this state.

10 28. Defendant MCKESSON CORPORATION was and is a corporation organized and existing
11 under the laws of the State of Delaware, with its principal place of business at One Post Street, San
12 Francisco, NEW YORK 94104. MCKESSON CORPORATION touts itself as, among other things:
13 (1) the largest pharmaceutical distributor in North America distributing one-third of the medications
14 used daily in North America, (2) the nation's leading health care information technology company,
15 and (3) a provider of "decision support" software to help physicians determine the best possible
16 clinical diagnosis and treatment plans for patients.

17 29. At all relevant times, Defendant MCKESSON CORPORATION conducted regular and
18 sustained business in NEW YORK by selling and distributing its products and services in NEW YORK
19 and engaged in substantial commerce and business activities in all counties of NEW YORK.

20 30. The true names or capacities, whether individual, corporate, or otherwise, of Defendants
21 Does 1-50, are unknown to Plaintiffs who therefore sue said Defendants by such fictitious names.
22 Plaintiffs believe and allege that each of the Defendants designated herein by fictitious names is in
23 some manner legally responsible for the events and happenings herein referred to and proximately
24 caused foreseeable damages to Plaintiffs as alleged herein.

25 31. All Defendants are authorized to do business in NEW YORK and derive substantial income
26 from doing business in this state.

27 32. As used herein, "Defendants" includes all named Defendants as well as Does 1-50.

28 33. Upon information and belief, Defendants did act together to design, sell, advertise,



1 manufacture and /or distribute LIPITOR®, with full knowledge of its dangerous and defective nature.

2 34. This court has personal jurisdiction over the Defendants named herein because said
3 Defendants have sufficient minimum contacts with the forum state upon which to predicate personal
4 jurisdiction.

5 **GENERAL ALLEGATIONS**

6 35. This is a civil action brought on behalf of Plaintiffs regarding damages which were proximately
7 caused by the ingestion of LIPITOR® by Plaintiffs. These individuals are referred to herein as
8 "Plaintiffs."

9 36. The State of NEW YORK has a substantial interest in assuring that the acts of these Defendants
10 who have been given the privilege of doing business in its borders act in conformity with all laws
11 applicable to the acts as set forth in this Complaint.

12 37. At all times relevant herein, Defendants were in the business of designing, testing,
13 manufacturing, labeling, advertising, marketing, testing, promoting, selling and distributing
14 pharmaceuticals, including LIPITOR®, and other products for use by the mainstream public, including
15 Plaintiffs.

16 38. LIPITOR® was designed, manufactured, marketed, distributed and sold to the Plaintiffs by
17 one or more Defendants, and more specifically, upon information and belief, Defendant McKesson
18 did distribute the LIPITOR® Plaintiffs ingested, which gives rise to the causes of action and the
19 injuries sustained as a direct and proximate result of such ingestion.

20 39. LIPITOR® is prescribed to reduce the amount of cholesterol and other fatty substances in the
21 blood.

22 40. Parke-Davis Pharmaceutical Research, a division of Warner-Lambert Company obtained
23 approval from the Food and Drug Administration ("FDA") to market LIPITOR® on December 17,
24 1996. Warner-Lambert entered into a co-marketing agreement with Pfizer to sell LIPITOR®, and
25 thereafter those companies began distributing and selling LIPITOR® throughout the United States in
26 1997. On June 19, 2000 Pfizer acquired Warner Lambert and all rights to LIPITOR®.

27 41. Despite its knowledge of data indicating that LIPITOR® use is causally related to the
28 development of type 2 diabetes and/or blood glucose levels diagnostic for type 2 diabetes, Pfizer



1 promoted and marketed LIPITOR® as safe and effective for persons such as Plaintiffs throughout the
2 United States, including in the State of NEW YORK.

3 42. LIPITOR® represented approximately 25 percent of Defendant's annual revenue between
4 2001 and 2011.

5 43. Pfizer spent approximately \$1.5 billion in advertising directly to consumers.

6 44. Before its patent expired, Defendant spent over \$600 million per year to market LIPITOR.

7 45. At the time the FDA approved LIPITOR, there were at least four safe and effective statin drugs
8 on the market, and at least five drugs that safely and effectively lowered cholesterol.

9 46. On August 11, 2011, the Division of Metabolism and Endocrinology Products of the FDA
10 requested that Defendant Pfizer make labeling changes for LIPITOR® based upon the FDA's
11 comprehensive review, including clinical trial data.

12 47. In February 2012, Pfizer added the following language to its Warnings and Precautions
13 Section: "Increases in HbA1c and fasting serum glucose levels have been reported with HMG-CoA
14 reductase inhibitors, including LIPITOR®."

15 48. Until the February 2012 change, LIPITOR's label had never warned patients of any potential
16 relation between changes in blood sugar levels and taking LIPITOR

17 49. Despite the February 2012 label change, LIPITOR®'s label continued to fail to clearly warn
18 consumers of the serious risk of developing type 2 diabetes *per se* when using LIPITOR®.

19 50. At all times material hereto, Defendants knew or should have known that the risks of
20 LIPITOR® included the severe and life-threatening complications of type 2 diabetes.

21 51. At all times material hereto, Defendants, by and through their agents, servants, and/or
22 employees, negligently, recklessly and/or carelessly marketed, distributed, and/or sold LIPITOR®
23 without adequate instructions or warnings of the drug's serious side effects and unreasonably
24 dangerous risks.

25 52. LIPITOR® is rapidly absorbed after oral administration; maximum plasma concentrations
26 occur within 1 to 2 hours. The absolute bioavailability of Atorvastatin (parent drug) is approximately
27 14% and the systemic availability of HMG-CoA reductase inhibitory activity is approximately 30%.

28 53. The absorption and bioavailability of LIPITOR® differs substantially depending on the patient



1 profile, including whether a patient is male or female, and the age of the patient.

2 54. LIPITOR® has not been shown to be effective in women.

3 55. Mean plasma elimination half-life of LIPITOR® in humans is approximately 14 hours, but the
4 half-life of inhibitory activity for HMG-CoA reductase is 20 to 30 hours due to the contribution of
5 active metabolites.

6 56. Defendants sold or aided and abetted in the sale of LIPITOR® which was and is defective and
7 unreasonably dangerous. At all pertinent times, Defendants knew, or should have known, that
8 LIPITOR® was and is hazardous to human health.

9 57. Defendants, through their funding and control of certain studies concerning the effects of
10 LIPITOR® on human health, their control over trade publications, promoting, marketing, and/or
11 through other agreements, understandings and joint undertakings and enterprises, conspired with,
12 cooperated with and/or assisted in the wrongful suppression, active concealment and/or
13 misrepresentation of the true relationship between LIPITOR® and type 2 diabetes, to the detriment of
14 the public health, safety and welfare and thereby causing harm to the State.

15 58. Specifically, and in addition to the allegations above, Defendants knew of the hazards
16 associated with LIPITOR®; affirmatively and actively concealed information which clearly
17 demonstrated the dangers of LIPITOR® and affirmatively misled the public and prescribing
18 physicians with regard to the material and clear risks of LIPITOR® with the intent that prescribing
19 physicians would continue to prescribe LIPITOR®. Defendants well knew that prescribing physicians
20 would not be in a position to know the true risks of LIPITOR® and Defendants knew that prescribing
21 physicians would rely upon the misleading information that they promulgated.

22 59. At all pertinent times, Defendants purposefully and intentionally engaged in these activities,
23 and continue to do so, knowing full well that when the general public, including Plaintiffs, use
24 LIPITOR® as Defendants intended, that Plaintiffs would be substantially certain to suffer disease,
25 injury and sickness.

26 60. The statements, representations and promotional schemes publicized by Defendants were
27 deceptive, false, incomplete, misleading and untrue. Defendants knew, or should have known, that
28 their statements, representations and advertisements were deceptive, false, incomplete, misleading and



1 untrue at the time of making such statements. Defendants had an economic interest in making such
2 statements. Neither the Plaintiffs nor the physicians who prescribed LIPITOR® to them had
3 knowledge of the falsity or untruth of Defendants' statements, representations and advertisements
4 when prescriptions for LIPITOR® were written. Moreover, Plaintiffs and Plaintiffs' physicians had
5 a right to rely on Defendants' statements, representations and advertisements. Each of the statements,
6 representations and advertisements were material to the Plaintiffs' purchase of LIPITOR® in that the
7 Plaintiffs would not have purchased LIPITOR® if Plaintiffs had known that Defendants' statements,
8 representations and advertisements were deceptive, false, incomplete, misleading and untrue. These
9 acts were designed to and did in fact allow Defendants to earn substantial income from the sale of
10 LIPITOR®.

11 61. Plaintiffs had a right to rely upon the representations of Defendants and were directly and
12 proximately injured by such reliance, all as described above.

13 62. Had Plaintiffs been adequately warned of the increased risk of injuries and life-threatening side
14 effects, they would have chosen to request other prescription medications and avoided LIPITOR®'s
15 injuries and potential life threatening side effects.

16 63. Plaintiffs were prescribed LIPITOR® by a physician(s) authorized to prescribe LIPITOR®,
17 ingested LIPITOR® as prescribed, and as a result suffered damages and injury.

18 64. Plaintiffs were prescribed LIPITOR® and used it as directed.

19 65. Plaintiffs were prescribed LIPITOR® to lower their levels of low-density lipoprotein ("LDL").

20 66. Plaintiffs agreed to initiate LIPITOR® treatment in an effort to reduce their risk of developing
21 heart disease.

22 67. Plaintiffs developed type 2 diabetes after initiating their LIPITOR® treatment.

23 68. Plaintiffs were diagnosed with type 2 diabetes while still taking LIPITOR®. As a result, for
24 the rest of their lives they must undergo regular testing of their blood glucose levels, adhere to a
25 restrictive diabetic diet, and take medication to control their diabetes, due to their diabetes, they are
26 now at a markedly increased risk of heart disease, blindness, neuropathy, and kidney disease.

27 69. Defendants negligently, recklessly and wantonly failed to warn Plaintiffs, Plaintiffs'
28 physicians and the general public, of the risks associated with taking LIPITOR®. Defendants failed



1 to do so even after various studies, including their own, showed that there were problems concerning
2 the risk diabetes associated with LIPITOR®.

3 70. Defendants endeavored to deceive Plaintiffs, and the general public, by not disclosing the
4 findings of the various studies, including its own that revealed problems concerning the dangers of
5 LIPITOR®.

6 71. Further, Defendants did not provide warnings and instructions that would have put Plaintiffs
7 and Plaintiffs' physicians, and the general public, on notice of the dangers and adverse effects caused
8 by LIPITOR®.

9 72. Defendants designed, manufactured, distributed, sold and/or supplied LIPITOR® and placed
10 LIPITOR® into the stream of commerce in a defective and unreasonably dangerous condition, taking
11 into consideration the utility of the drug and the risk to Plaintiffs and the general public.

12 73. LIPITOR® as designed, manufactured, distributed, sold and/or supplied by Defendants was
13 defective as marketed due to inadequate warnings, instructions and/or labeling.

14 74. LIPITOR® as designed, manufactured, distributed, sold and/or supplied by Defendants was
15 defective due to inadequate testing before and after Defendants' knowledge of the various studies,
16 including their own, evidencing the rightful concerns over the risks of diabetes and diabetes-related
17 injuries associated with LIPITOR®.

18 75. The nature of the Plaintiffs' injuries and their relationship to LIPITOR® use were inherently
19 undiscoverable; and, consequently, the discovery rule should be applied to toll the running of the
20 statute of limitations until Plaintiffs knew or through the exercise of reasonable care and diligence
21 should have known of the existence of their claims against Defendants. Plaintiffs did not discover,
22 and through the exercise of reasonable care and due diligence, could not have discovered, their injuries
23 earlier.

24 76. Further, Plaintiffs did not have knowledge of facts that would lead a reasonable, prudent person
25 to make inquiry to discover Defendants' tortious conduct. Under appropriate application of the
26 discovery rule, Plaintiffs' suit was filed well within the applicable statutory limitations period.

27 77. Defendants are estopped from asserting a statute of limitations defense because they
28 fraudulently concealed from Plaintiffs the nature of Plaintiffs' injuries and the connection between the



1 injury and LIPITOR®.

2 78. Defendants have over-promoted LIPITOR®, thus eliminating a defense of learned
3 intermediary.

4 79. LIPITOR® fails to meet reasonable consumer expectations, thus eliminating the defense of
5 learned intermediary.

6 80. Defendants failed to properly disclose to the FDA and the public, information necessary to
7 allow an informed decision to be made with regard to the contents of the label and/or the approved
8 uses of LIPITOR®.

9 81. For each Cause of Action hereinafter alleged and averred, the above and following Paragraphs
10 should be considered re-alleged as if fully rewritten.

11 **FRAUDULENT CONCEALMENT AND TOLLING**

12 82. Plaintiffs re-allege all prior paragraphs of the Complaint as if set out here in full.

13 83. The running of any statute of limitations has been tolled by reason of Defendants' fraudulent
14 concealment. Defendants, through their affirmative misrepresentations and omissions, actively
15 concealed from Plaintiffs and their physicians the true risks associated with the use of Lipitor.

16 84. As a result of Defendant's actions, Plaintiffs and their physicians were unaware, and could not
17 reasonably have known or have learned through reasonable diligence, that they had been exposed to
18 the risks alleged herein and that those risks were the direct and proximate result of Defendants' acts
19 and omissions.

20 **FIRST CAUSE OF ACTION**

21 **(Strict Liability)**

22 85. Plaintiffs re-allege all prior paragraphs of the Complaint as if set out here in full.

23 86. Defendants defectively designed and manufactured LIPITOR®, which was marketed to
24 physicians and the general public, including Plaintiffs.

25 87. Plaintiffs ingested LIPITOR® for the treatment and control of high cholesterol, which was the
26 foreseeable and intended use of LIPITOR®.

27 88. LIPITOR® failed to perform as safely as an ordinary consumer would expect, as the use of
28 LIPITOR® was associated with an increased risk of severe, physical injury, or death, resulting from



1 type 2 diabetes.

2 89. The design of LIPITOR® was defective in that the risks associated with using LIPITOR®
3 outweighed any benefits of the design. Any benefits associated with the use of LIPITOR® were
4 relatively minor and could have been obtained by the use of other, alternative treatments and
5 products that could equally or more effectively reach similar results.

6 90. The defect in design existed when the product left Defendants' possession.
7

8 91. At the time LIPITOR® left the control of Defendants, Defendants knew or should have
9 known of the risks associated with ingesting LIPITOR®.

10 92. At all times material hereto, Defendants failed to provide Plaintiffs the warnings or
11 instructions a manufacturer exercising reasonable care would have provided concerning the risk which
12 ultimately caused Plaintiffs' injuries.

13 93. At all times material hereto, Defendants failed to provide post-marketing warnings or
14 instructions to Plaintiffs or Plaintiffs' physicians sufficient to convey the true risks associated with
15 the use of LIPITOR®.

16 94. As a direct and proximate result of Defendants' wrongful conduct, Plaintiffs were injured as
17 described above.
18

19 WHEREFORE, Plaintiffs demand judgment against Defendants in such an amount of
20 compensatory and punitive damages as a jury deems reasonable, plus costs.

21 **SECOND CAUSE OF ACTION**

22 **(Negligence)**

23 95. Plaintiffs re-allege all prior paragraphs of the Complaint as if set out here in full.

24 96. Defendants had a duty to exercise reasonable care in designing, developing, testing,
25 manufacturing, packaging, labeling, marketing, advertising, selling and/or distributing LIPITOR®.

26 97. Defendants failed to exercise ordinary care in designing, developing, testing,
27 manufacturing, packaging, labeling, marketing, advertising, selling, and/or distributing of LIPITOR®.

28 98. Defendants knew or should have known that LIPITOR® created an unreasonable risk of



1 bodily harm.

2 99. Despite the fact Defendants knew or should have known that LIPITOR® caused
3 unreasonable, dangerous side effects which many users would be unable to remedy by any means,
4 they continued to market LIPITOR® to physicians, including Plaintiffs' physicians, and consumers,
5 including Plaintiffs, when there were safer alternative methods of treatment.

6 100. Defendants knew or should have known that consumers such as Plaintiffs would suffer injury
7 or death as a result of Defendants' failure to exercise ordinary care as described above.

8 101. As a direct and proximate result of Defendants' negligence and wrongful conduct, Plaintiffs
9 were injured as described above.

10 WHEREFORE, Plaintiffs demand judgment against Defendants in such an amount of
11 compensatory and punitive damages as a jury deems reasonable, plus costs.

12 **THIRD CAUSE OF ACTION**

13 **(Breach of Express Warranty)**

14 102. Plaintiffs re-allege all prior paragraphs of the Complaint as if set out here in full.

15 103. Before Plaintiffs were first prescribed LIPITOR® and during the period in which they used
16 LIPITOR®, Defendants expressly warranted that LIPITOR® was safe.

17 104. LIPITOR® did not conform to these express representations because LIPITOR® was not
18 safe and had an increased risk of serious side effects, including diabetes, whether taken individually
19 or in conjunction with other therapies.

20 105. As a direct and proximate result of this wrongful conduct, Plaintiffs were injured as
21 described above.

22 WHEREFORE, Plaintiffs demand judgment against Defendants in such an amount of
23 compensatory and punitive damages as a jury deems reasonable, plus costs.

24 **FOURTH CAUSE OF ACTION**

25 **(Breach of Implied Warranty)**

26 106. Plaintiffs re-allege all prior paragraphs of the Complaint as if set out here in full.

27 107. At the time Defendants packaged, labeled, promoted, marketed, advertised, sold, and/or
28 distributed LIPITOR® for use by Plaintiffs, they knew of the use for which LIPITOR® was



1 intended and impliedly warranted the product to be of merchantable quality and safe and fit for such
2 use.

3 108. Plaintiffs reasonably relied upon the skill and judgment of Defendants as to whether
4 LIPITOR® was of merchantable quality and safe and fit for its intended use.

5 109. Contrary to such implied warranty, LIPITOR® was not of merchantable quality or safe or fit
6 for its intended use, because the product was and is unreasonably dangerous and unfit for the ordinary
7 purpose for which it was used as described above.

8 110. As a direct and proximate result of the Defendants' wrongful conduct, Plaintiffs were
9 injured as described above.

10 WHEREFORE, Plaintiffs demand judgment against Defendants in such an amount of
11 compensatory and punitive damages as a jury deems reasonable, plus costs.

12 **FIFTH CAUSE OF ACTION**

13 **(Fraud)**

14 111. Plaintiffs re-allege all prior paragraphs of the Complaint as if set out here in full.

15 112. Before Plaintiffs were prescribed LIPITOR® and during the period in which they took
16 LIPITOR®, Defendants made false representations regarding the safety and efficacy of LIPITOR®.
17 Defendants knew that its representations regarding the safety of LIPITOR® were false.

18 113. Defendants' representations regarding the safety and efficacy of LIPITOR® were made with
19 the intent of misleading Plaintiffs and Plaintiffs' physicians in relying upon those representations, and
20 Plaintiffs and Plaintiffs' physicians were justified in relying, and did in fact rely, upon such
21 misrepresentations.

22 114. Defendants' misrepresentations regarding the safety and efficacy of LIPITOR® were material.
23 Plaintiffs would not have ingested LIPITOR® for treatment and control of
24 high cholesterol had they been made aware of the true risks associated with using LIPITOR®, including
25 but not limited to diabetes.

26 115. As a direct and proximate result of Defendants' misrepresentations, Plaintiffs were injured
27 as described above.

28 WHEREFORE, Plaintiffs demand judgment against Defendants in such an amount of



1 compensatory and punitive damages as a jury deems reasonable, plus costs.

SIXTH CAUSE OF ACTION

(Fraudulent Concealment)

116. Plaintiffs re-allege all allegations of the Complaint as if set out here in full.

117. Before Plaintiffs were prescribed LIPITOR® and during the period in which they took LIPITOR®, Defendants concealed material facts regarding the safety and efficacy of LIPITOR®, more specifically, that LIPITOR® caused diabetes. Defendant had a duty to disclose this information to prescribing physicians and the general public, including Plaintiffs.

118. Defendants' concealment of material information regarding LIPITOR® was done with the intent to mislead Plaintiffs and Plaintiffs' physicians, and Plaintiffs and Plaintiffs' physicians were justified in reliance on Defendants' concealment.

119. As a direct and proximate result of Defendants' concealment of material facts, Plaintiffs were injured as described above.

WHEREFORE, Plaintiffs demand judgment against Defendants in such an amount of compensatory and punitive damages as a jury deems reasonable, plus costs.

SEVENTH CAUSE OF ACTION AGAINST

DEFENDANTS CONSUMER FRAUD - VIOLATION OF

GBL §§ 349 and 350

120. Plaintiffs incorporate by reference the paragraphs above, as though fully set forth herein.

121. Defendants acted, used and employed unconscionable commercial practices, deception, fraud, false pretenses, false promises and misrepresentations, and knowingly concealed, suppressed and omitted material facts with the intent that consumers, and their physicians and medical providers, rely upon such concealment, suppression and omission, in connection with the sale, advertisement and promotion of Lipitor, in violation of all applicable

1 state consumer fraud statutes, for the purpose of influencing and inducing physicians and
2 medical providers to prescribe Lipitor to patients and consumers herein. By reason of the
3 Defendants' unconscionable, deceptive and fraudulent acts and practices, and false pretenses,
4 false promises and misrepresentations, reasonable patients/consumers acting reasonably,
5 herein, were caused to suffer ascertainable loss of money and property and actual damages.

6 122. Defendants engaged in consumer-oriented, commercial conduct by selling and
7 advertising the subject product.

8 123. Defendants misrepresented and omitted material information regarding the subject
9 product by failing to disclose known risks.

10 124. Defendants misrepresentations and concealment of material facts constitute

11 unconscionable commercial practices, deception, fraud, false pretenses, misrepresentation,
12 and/or the knowing concealment, suppression, or omission of materials facts with the intent that
13 others rely on such concealment, suppression, or omission in connection with the sale and
14 advertisement of the subject product, in violation of New York General Business Law ("GBL")
15 §§ 349 and 350.

16 125. New York has enacted statutes to protect consumers from deceptive, fraudulent, and
17 unconscionable trade and business practices. Defendants violated these statutes by knowingly
18 and falsely representing that the subject product was fit to be used for the purpose for which
19 it was intended, when Defendants knew it was defective and dangerous, and by other acts
20 alleged herein.

21 126. Defendants engaged in the deceptive acts and practices alleged herein in order to sell
22 the subject product to the public.

23 127. As a direct and proximate result of Defendants' violations of GBL §§ 349 and 350,
24 Plaintiffs have suffered damages, for which they are entitled to compensatory damages,



equitable and declaratory relief, punitive damages, costs and reasonable attorneys' fees.
1
2 128. As a direct and proximate result of Defendants' conduct, Plaintiff's used Lipitor and
3 suffered serious physical injury and economic loss.

4 129. Defendants' actions and omissions as alleged in this Complaint demonstrate a
5 flagrant disregard for human life, so as to warrant the imposition of punitive damages.

6 130. Plaintiffs seek actual and punitive damages as well as reasonable attorneys' fees and
7 costs from Defendants as alleged herein.

8 **WHEREFORE**, by reason of the foregoing, Plaintiffs were damaged in a sum which
9 exceeds the jurisdictional limits of all lower courts
10 which would have jurisdiction of this matter, and in addition, Plaintiffs demand judgment against
11 Defendants for damages, individually in accordance with any percentage of fault assigned to them,
12 and/or jointly and severally, as the law may allow, and award relief as determined by all of the
13 evidence, as well as all costs of this action and a trial by jury of all issues to be tried.
14
15
16

17 **NINTH CAUSE OF ACTION**

18 **(Loss of Consortium)**

19 **THIS CAUSE OF ACTION APPLIES TO THE FOLLOWING PLAINTIFFS: ARNOLD**
20 **BUONAMANO, EDWARD MEIDL, RONNIE SCOTT, BRYAN AXELROD, and**
21 **TOMMIE A. RHETT (Hereinafter referred to as "LOC PLAINTIFFS")**

22 131. Plaintiffs hereby incorporate by reference as if fully set forth herein, each and every
23 allegation contained in the foregoing paragraphs.

24 132. As a proximate result of the personal injuries suffered by LOC PLAINTIFFS, as described
25 in this complaint, LOC PLAINTIFFS has been deprived of the benefits of their marriage including
26 her love, affection, society, and consortium, and other wifely duties and actions. LOC
27 PLAINTIFFS were provided with all of the benefits of a marriage between husband and wife, prior
28

1 to her ingestion of LIPITOR by their respective Plaintiff wives and the resulting injuries described
2 herein.

3 133. LOC PLAINTIFFS have also suffered the permanent loss of their respective Plaintiff
4 wives' daily and regular contribution to the household duties and services, which each provides to
5 the household as husband and wife.

6 134. LOC PLAINTIFFS have also incurred the costs and expenses related to the medical care,
7 treatment, medications, and hospitalization to which their respective Plaintiff wives were subjected
8 for the physical injuries she suffered as a proximate result of her ingestion of LIPITOR. LOC
9 PLAINTIFFS will continue to incur the future costs and expenses related to the care, treatment,
10 medications, and hospitalization of their respective Plaintiff wives due to her injuries.

11 135. LOC PLAINTIFFS have suffered loss of consortium, as described herein, including the
12 past, present, and future loss of their wives' companionship, services, society, and the ability of
13 their wives to provide LOC PLAINTIFFS with the benefits of marriage, including *inter alia*, loss of
14 contribution to household income and loss of household services, all of which has resulted in his
15 pain, suffering, and mental and emotional distress and worry.

16 ////

17 **WHEREFORE**, Plaintiffs pray for judgment against Defendants as hereinafter set forth.

18 **PRAAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs demand judgment against the Defendants as follows:

- 20 1. For general (non-economic) damages according to proof at the time of trial;
21 2. For special (economic) damages according to proof at the time of trial;
22 3. For medical, incidental, and hospital expenses according to proof;
23 4. For restitution;
24 5. For punitive damages;
25 6. For pre-judgment and post-judgment interest as permitted by law;
26 7. For cost of suit incurred herein as permitted by law;
27 8. For such other and further relief as this Court may deem proper.



DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all issues so triable.

Dated: APRIL 15, 2019

Respectfully submitted,

Excolo Law, PLLC

By: /s/ 
Ari Kresch
26700 Lahser Road, Suite 401
Southfield, MI 48076
akresch@1800lawfirm.com
Attorneys for Plaintiffs

VERIFICATION

I, the undersigned, certify and declare that I have read the foregoing complaint, and know its contents.

I am the attorney for Plaintiffs to this action. Such parties are absent from the county where I have my office and is unable to verify the document described above. For that reason, I am making this verification for and on behalf of the Plaintiffs. I am informed and believe on that ground allege the matters stated in said document are true.

Executed on April 15, 2019 in Southfield, MI.

I declare under penalty of perjury under the laws of the State of NEW YORK that the foregoing is true and correct.

Respectfully Submitted,

EXCOLO LAW, PLLC

By: 

Ari Kresch
26700 Lahser Road.
Southfield, MI. 48033
akresch@1800lawfirm.com

Date: APRIL 15, 2019

